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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA  
THIRD APPELLATE DISTRICT  
(San Joaquin)

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In re K.W., a Person Coming Under the  
Juvenile Court Law.

THE PEOPLE,

Plaintiff and Respondent,

v.

K.W.,

Defendant and Appellant.

C086193

(Super. Ct. No. JJCJVDE20170000605)

Defendant, K.W., appeals the juvenile court's order finding he had failed to successfully complete his probation under Welfare and Institutions Code section 725,<sup>1</sup> declaring him a ward of the court, and dismissing his case. Defendant, who was then 18 and detained on unrelated adult charges, argues the trial court abused its discretion

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<sup>1</sup> Undesignated statutory references are to the Welfare and Institutions Code.

because his failure to complete the required community service hours was not a willful violation of his probation. We affirm the judgment.

#### FACTUAL AND PROCEDURAL HISTORY

A wardship petition was filed against K.W. alleging the following violations of the Penal Code: burglary (§ 459; counts one & three); conspiring to commit burglary (§§ 182, subd. (a)(1), 459; counts two & four); and resisting a peace officer (§ 148, subd. (a)(1); count five). Thereafter, defendant admitted count five, and the remaining counts were dismissed for insufficiency of evidence. The juvenile court found defendant was a person coming within the jurisdiction of section 602 and granted him section 725 informal probation for a term of six months, subject to several terms and conditions of probation. The terms imposed included that defendant: (1) “[o]bey all laws,” (2) “[h]ave no new violations or probation referrals,” (3) “[d]o not commit the same or similar offense,” and (4) “complete 25 hours community service.” The court calendared the matter for a six-month review on November 30, 2017.

Thereafter, on October 18, 2017, the probation department filed a petition for an order to show cause why defendant’s section 725 probation should not be terminated by virtue of his failure to obey all laws. Specifically, it requested the matter be set for a jurisdiction hearing based upon the allegations of defendant’s arrest and detention on October 8, 2017 in the San Joaquin County Jail for the following violations of the Penal Code: actively participating in a criminal street gang (§ 186.22, subd. (a)); committing a felony for the benefit of a criminal street gang (§ 186.22, subd. (b)(1)); carrying a concealed firearm (§ 25400, subd. (a)(1)); carrying a loaded firearm (§ 25850, subd. (a)); directly inflicting unjustifiable physical pain or mental suffering on a child (§ 273a, subd. (b)); possessing large-capacity ammunition magazine (§ 32310); and receiving stolen property (§ 496, subd. (a)).

At the order to show cause hearing, defendant's counsel refused to admit to the new petition because it was premised solely upon new law violations. The juvenile court refused to revoke probation based on the new law violations. Instead, the court explained: "Well, what I suggest we do is -- he was granted the 725 on May 31st. November 30th would be the expiration of the six months. And if he hasn't done the conditions he's supposed to do, at that point in time I could certainly revoke the 725 based upon jurisdictional issues. [¶] But to just arbitrarily do it now, I think that's premature. I mean, I understand why he can't admit it. And he has not failed; he still has a month."

Defendant's counsel objected that if defendant was in custody, he would be unable to complete his community service requirement, to which the court noted that defendant had already had five months to comply.

At the section 725 review hearing, defendant's counsel argued there was no evidentiary basis to deny defendant's successful completion of his informal juvenile probation. He reasoned dismissal was required because "[c]ompleting the community service became a legal impossibility as [defendant] got booked on October 8, 2017" and the only evidence defendant had violated the order to obey all laws was the order to show cause. The People disagreed, arguing defendant's detention within the adult system on another case did not alter his noncompliance with his probation requirements in juvenile court. Thereafter, the juvenile court revoked defendant's section 725 probation, and defense counsel reiterated his previous objection that completing the community service was a legal impossibility. Defense counsel nonetheless conceded that a disposition was not needed for defendant in the juvenile case given that he was "facing life multiple times over in adult court." In accordance with the requests of the People and probation department, the juvenile court declared defendant a section 602 ward of the court and terminated his probation, ending his juvenile case. Defendant timely appealed.

## DISCUSSION

Defendant argues the juvenile court erred in revoking his section 725 probation because his detention on different charges prevented him from completing the requirement that he perform 25 hours of community service. Defendant reasons that because he was detained, he did not willfully fail to perform that community service, and thus, he cannot be penalized for that failure. We are not persuaded.

Section 725, subdivision (a), authorizes a juvenile court to grant a minor probation “for a period *not to exceed* six months.” (Italics added.) Thus, defendant had six months to complete the 25 hours of community service imposed by the trial court. It is undisputed defendant did not complete the 25 hours of community service prior to the six-month review hearing. Thus, it is undisputed defendant failed to comply with the requirements of his informal probation.

Defendant argues this court should excuse his failure to complete the community service requirement because he was detained for a portion of the six months that he had to complete that community service requirement. However, defendant has provided no authority that his subsequent detention can, much less should, excuse his failure to complete the community service requirement within the allotted time. What defendant seeks is nothing like *People v. Zaring* (1992) 8 Cal.App.4th 362 at pages 375-379, wherein the appellate court reversed the lower court’s revocation of probation over the probationer being 22 minutes late to a hearing because she unexpectedly had to take her children to school. As recognized in *Zaring*, the decision to revoke probation lies within the discretion of the judge, who will not be overturned absent an abuse of discretion. (*Id.* at p. 378.) That discretion “is predicated upon reason and law, but is primarily directed to the *necessary end of justice*.” (*Id.* at p. 379, italics added.)

Here, the necessary end of justice would not be served by allowing defendant’s subsequent detention to automatically eliminate his community service requirement,

thus allowing him to successfully complete his section 725 probation. While what defendant received and what he sought in the juvenile court may appear to be the same -- dismissal of his juvenile case -- the import of the manner of dismissal is profound.<sup>2</sup> If defendant successfully completed his section 725 probation, the juvenile court would be required to dismiss the petition creating his juvenile case and seal the associated records. (§ 786, subd. (a).) Further, by operation of statute, “the arrest and other proceedings in the case shall be deemed not to have occurred and the person who was the subject of the petition may reply accordingly to an inquiry by employers, educational institutions, or other persons or entities regarding the arrest and proceedings in the case.” (§ 786, subd. (b).)

While we are mindful defendant was detained on charges for which he is innocent until proven guilty, he is also personally responsible for his own conduct. It is appropriate to place the onus of completing the community service requirement that would afford defendant the privilege of having his juvenile wardship petition dismissed and his records sealed squarely at defendant’s feet.

This is not to say that defendant, having been arrested and detained in jail, was completely without recourse. Had defendant substantially completed the community service requirements such that it would have been within the end of justice to reform the court’s order that he complete 25 hours of community service, he could have petitioned the court to modify his section 725 conditions. (See §§ 775, 778.)

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<sup>2</sup> To the extent defendant suggests he should have been allowed to continue on section 602 probation after he failed to successfully complete his informal term, this is contrary to his trial counsel’s concession that no such disposition was needed given the pending adult matter.

## DISPOSITION

The judgment is affirmed.

/s/

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HOCH, J.

We concur:

/s/  
HULL, Acting P. J.

/s/  
MURRAY, J.